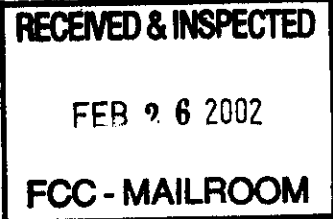


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Upshur County School District)	File No. SLD-220681
Buckhannon, West Virginia)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: February 13, 2002

Released: February 15, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division is a Request for Review filed by Upshur County School District (Upshur), Buckhannon, West Virginia, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Upshur's Request for Review seeks review of SLD's denial of three funding requests in its Funding Year 4 application for discounts under the schools and libraries universal service mechanism.² Upshur has withdrawn its request for review of the denial of one of these funding requests.³ We therefore dismiss the Request for Review insofar as it appeals the denial of this funding request. Further, for the reasons set forth below, we deny the Request for Review of the other two requests.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for

¹ Letter from Nathaniel Hawthorne on behalf of Upshur County School District, to Federal Communications Commission, filed September 4, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ See Letter from Nathaniel Hawthorne on behalf of Upshur County School District, to Federal Communications Commission, filed January 11, 2001 (requesting withdrawal of request for review of Funding Request Number (FRN) 591785).

discounts for eligible telecommunications services, Internet access, and internal connections.⁴ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.⁷ These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).⁸ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.⁹ Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.¹⁰ Economic disadvantage for schools and school districts is measured by the percentage of their student enrollment that is eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism.¹¹ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds

⁴ 47 C.F.R. §§ 54.502, 54.503.

⁵ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915 (1998) (*Fifth Order on Reconsideration*).

⁸ 47 C.F.R. §§ 54.502, 54.503.

⁹ The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. See 47 C.F.R. § 54.507(a).

¹⁰ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹¹ 47 C.F.R. § 54.505(b)(1).

for discounts to eligible applicants at each descending single discount percentage, *e.g.*, eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.¹² In Funding Year 4, applicants with less than an 85% discount were not eligible for internal connections discounts.¹³

4. Upshur appeals the denial of FRN 591772 and 600332, both of which sought discounted internal connections.¹⁴ Both requests were denied on the grounds that the recipient's did not have a discount rate sufficient to qualify for internal connections in Funding Year 4.¹⁵ Upshur argues that "the applicant is a 90% district" and that the documentation provided by the Upshur supports funding at a 90% discount rate.¹⁶ We find that Upshur is incorrect in its assessment of the documentation. According to documentation submitted by Upshur during application review, the named recipient of both services, Washington Elementary School, has only 77 students out of 104 that are eligible for NSLP, or 74.038%, and is therefore entitled under the discount matrix to a discount rate of only 80 percent.¹⁷ Because schools with less than an 85% discount rate were ineligible for internal connections discounts in Funding Year 4, we find that SLD correctly denied the two FRNs.¹⁸

¹² 47 C.F.R. § 54.507(g)(1)(iii).

¹³ SLD web site, What's New (August 7, 2001),
<<http://www.sl.universalservice.org/whatsnew/082001.asp#080601>>.

¹⁴ Request for Review, at 2. Upshur's Request for Review is brought directly from the Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Upshur County School District, dated August 7, 2001 (Funding Commitment Decision Letter).

¹⁵ Funding Commitment Decision Letter, at 7-8.

¹⁶ Request for Review, at 2.

¹⁷ West Virginia Child Nutrition Program, Percentage of Needy Students (By School), faxed from West Virginia Department of Education, Office of Technology, to Schools and Libraries Division, Universal Service Administrative Company, July 17, 2001; *see also* FCC Form 471, Upshur County School District, filed January 16, 2001, at 3; 47 C.F.R. § 54.504(c).

¹⁸ *See supra*, n.13.

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Upshur County School District, Buckhannon, West Virginia, on September 4, 2001 IS DISMISSED in part and DENIED in part.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau